BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

GREGORY SIDEL) Claimant	
VS.	Docket No. 187,193
NORTHROCK GOODYEAR Respondent	DOOKOCTVO. 107,100
AND (**)	
ALLIED MUTUAL INSURANCE COMPANY Insurance Carrier	
AND)	
KANSAS WORKERS COMPENSATION FUND	

ORDER

ON the 5th day of July, 1994, the application of the claimant for review by the Workers Compensation Appeals Board of a Preliminary Hearing Order entered by Administrative Law Judge John D. Clark, dated May 5, 1994, came on for oral argument.

APPEARANCES

The claimant appeared by and through his attorney, Dale V. Slape of Wichita, Kansas. The respondent and its insurance carrier appeared by and through their attorney, Cortland Clotfelter of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney, Steven Foulston of Wichita, Kansas. There were no other appearances.

RECORD

The record in this case consists of the documents on file with the Division of Workers Compensation including the transcript of the Preliminary Hearing held on April 26, 1994; the evidentiary deposition of Stephen D. Hoffman, dated April 28, 1994; the evidentiary deposition of Karl Otto, dated April 28, 1994; and, the exhibits attached thereto.

ISSUES

This is an Application for Review filed by the claimant requesting the Appeals Board to review Administrative Law Judge John D. Clark's Preliminary Hearing Order of May 5, 1994, which denied the claimant's request for temporary total disability benefits from February 8, 1994 to April 19, 1994. In requesting this review, the claimant has attempted to frame as a jurisdictional issue the fact that the respondent herein alleged that it would have had an accommodated job for the claimant within his restrictions and it is argued this is one of the "certain defenses" intended to grant the Appeals Board jurisdiction to review a preliminary hearing order as set forth in K.S.A. 44-534a(a)(2).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the entire record and for purposes of preliminary hearing, the Appeals Board finds as follows:

K.S.A. 44-534a gives the Administrative Law Judge the authority to either grant or deny the request for payment of temporary total disability compensation. The Appeals Board does not have jurisdiction to review such a decision unless one of the following issues is disputed: a) whether the employee suffered an accidental injury; b) whether injury arose out of and in the course of the employee's employment; c) whether notice is given or claim timely made; and, d) whether certain defenses apply.

In the present case, the claimant alleges that the respondent's claim that it would have had a job for the claimant is one of the certain defenses intended to grant the Appeals Board jurisdiction to review a preliminary hearing order as set forth in K.S.A. 44-534a(a)(2).

The Appeals Board finds that the Administrative Law Judge had the authority to deny temporary total disability compensation to the claimant pursuant to K.S.A. 44-534a. The Appeals Board further finds that the claimant's forgoing alleged defense is not one of the "certain defenses" intended to give the Appeals Board jurisdiction to review a preliminary hearing order.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge John D. Clark's Preliminary Hearing Order dated May 5, 1994, denying claimant's request for temporary total disability benefits from February 8, 1994 through April 19, 1994, remains in full force and effect.

Dated this _	day of August,	1994.

IT IS SO ORDERED.

BOARD MEMBER

BOARD MEMBER

c: Dale V. Slape, 1009 S. Broadway, Wichita, KS 67211 Cortland Clotfelter, 727 N. Waco, Suite 585, Wichita, KS 67203 Steven Foulston, PO Box 48128, Wichita, KS 67201 John D. Clark, Administrative Law Judge George Gomez, Director